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| APPLICATION NO.                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|--------------------------|------------------|
| 10/799,806                     | 03/13/2004  | Michael K. Julian    |                          | 8383             |
| 40742                          | 7590        | 01/19/2007           | EXAMINER                 |                  |
| TED MASTERS                    |             |                      | MATTER, KRISTEN CLARETTE |                  |
| TED MASTERS & ASSOCIATES, INC. |             |                      | ART UNIT                 | PAPER NUMBER     |
| 5121 SPICEWOOD DRIVE           |             |                      |                          |                  |
| CHARLOTTE, NC 28227-0313       |             |                      | 3771                     |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 01/19/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/799,806             | JULIAN, MICHAEL K.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Kristen C. Matter      | 3771                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 13 March 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 12 and 15. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: on line 3, "said connection" should be changed to --a connection--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 13, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Tseng (US 2004/0106882).

Regarding claim 1, Tseng discloses a massage system with a body (5) having a centerline, a pair of counter rotating neck massage heads and at least one pair of back massage heads wherein one of each pair is disposed on one side of the centerline and the other of said pair is disposed on the other side of said centerline (see Figure 4).

Regarding claim 8, Tseng further discloses that the massage heads (41) can be selectively rotated in first and second rotational directions (see Figures 6A and 6B and paragraph 26).

Regarding claims 13 and 14, Tseng further discloses the device can be covered with a cushion (see Figure 5 and paragraph 26).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Hayashi (US 6,056,707).

Regarding claim 2, the back massage heads disclosed by Tseng are selectively moveable, but Tseng is silent as to the neck massage heads being moveable. Hayashi discloses a chair-type massaging apparatus in which both neck massage heads and/or back massage heads are positionable along the centerline (see column 7, lines 55-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tseng's neck massage heads to be moveable as taught by Hayashi, so as to be able to adjust the location of the neck massage heads.

Regarding claim 18, the modified device taught by Tseng and Hayashi has all of the recited structural limitations of claim 18. Although Tseng does not explicitly state that a massage is provided by a user leaning against the system, the modified device is capable of providing a massage by a user leaning against the system in combination with a user positioning the neck massage heads to a desired position, and it would have been obvious to a killed artisan, upon seeing the modified device, to perform the recited method steps.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Yamasaki et al. (US 5,183,034) and further in view of Yamazaki et al. (US 2003/0199796).

Regarding claim 3, Tseng does not disclose each neck massage head including a rotating unit which rotates about a rotational axis, wherein a connection of said neck massage heads to said rotating unit is offset from the rotational axis. Yamasaki et al. ('034) disclose a massage head including a rotating unit (34) that rotates about a rotational axis (lying parallel to shaft 331). It would have been obvious to one of ordinary skill in the art at the time the invention was made

to provide Tseng's massage heads with rotating units in the neck massage heads for producing finger pressure massage and vibration depending on what type of massage therapy was desired. Yamazaki et al. ('034) does not teach the connection of the massage head to the rotating unit being offset from the rotational axis. However, Yamazaki et al. (2003/0199796) disclose similar massage heads in which the connection of the massage head (4) to the rotational unit (10') is offset from the rotational axis (parallel to shaft 12) (see Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have offset the connection of the massage head to the rotating unit from the rotational axis in the modified device of Tseng and Yamazaki et al. in order to more widely move the massage head for a more natural massage as disclosed by Yamazaki et al. ((2003/0199796)).

Regarding claim 4, the modified device of Tseng has the neck massage head having a central axis angled toward the rotational axis. See the massage head disclosed by Yamasaki et al. ('034), in which the central axis (lying parallel to shaft 422) is angled towards the rotational axis.

Regarding claim 5, the modified device of Tseng has the claimed feature. See Figure 8 of Yamasaki et al. ('034), which discloses that the massage head is connected to the rotating unit by a spring (423).

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng.

Regarding claim 6, Tseng does not disclose three pairs of back massage heads. Absent a critical teaching or showing of unexpected results, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to use three pairs of back

massage heads instead of two as disclosed by Tseng for increasing the area of the back able to be massaged simultaneously.

Regarding claim 17, the device disclosed by Tseng has all of the recited structural limitations of claim 17. Although Tseng does not explicitly state that a massage is provided by a user leaning against the system, it would have been obvious to a skilled artisan, upon seeing Tseng's device, to perform the recited method steps.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Zou (US 2003/0009117). Tseng does not disclose each back massage head including first and second protruding knobs. Zou discloses massage heads comprising first and second protruding knobs, wherein the first knob is taller than the second knob (see Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Tseng's back massage head with protruding knobs as taught by Zou in order to produce a kneading massage depending on what type of massage therapy was desired.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Cutler et al. (US 6,290,661) and further in view of Yamasaki et al. ('034). Tseng is silent as to selectively adjustable speed of rotation. Cutler et al. disclose a control system for massage chair/vibration elements which allows selection of vibration speed (see columns 3-6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a control system such as the one disclosed by Cutler et al. for selectively adjusting the speed as desired by the user for massage therapy. Cutler et al. is silent as to controlling rotation.

However, Yamasaki et al. disclose that the massager motors can drive both rotation and vibration. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used massage heads and motors that control vibration and/or rotation in combination with a control system such as the one taught by Cutler et al. for selectively adjusting a rotation speed for a desired strength of massage.

Claims 10-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Cutler et al. Tseng is silent as to selectively vibrateable massage heads, a plurality of vibration modes, selectable frequencies of vibrations, and pre-programmed massage. Cutler et al. disclose a control system for a massage chair/vibration elements which allows selection of which massage heads to activate (vibrate), selection of a vibrational mode, selection of frequency (pulse) of vibration, and selection of a preprogrammed massage (see columns 3-6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a control system such as the one disclosed by Cutler et al. for selectively adjusting the vibrational frequency and/or mode as desired by the user for a particular massage therapy.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Yamasaki et al. and further in view of Zou and further in view of Cutler et al. and further in view of Yamasaki et al. ('034). Please see above rejections for motivation for combining references.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Hayashi and further in view of Cutler et al. and further in view of Yamasaki et al. ('034). Please

see above rejections for motivation for combining references. The modified device of Tseng, Hayashi, Cutler et al, and Yamasaki et al. has all of the structural limitations needed to provide a massage using the method of claim 19 and it would have been obvious to a killed artisan, upon seeing the device, to perform the recited method steps.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*KCMatter*  
Kristen C. Matter  
Examiner  
Art Unit 3771

*JYu*  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
118/07